

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CHRISTOPHER PARISH,)
)
Plaintiff,)
)
vs.) NO. 3:07-CV-452
)
CITY OF ELKHART, et al.,)
)
Defendants.)

COURT'S TENDER OF INSTRUCTIONS

At the close of the evidence and before the argument of counsel, the Court indicates that it will give to the jury, after argument of counsel, Court Instructions numbered 1 through 40 both inclusive.

DATED: October 27, 2010

/s/RUDY LOZANO, Judge
United States District Court

COURT'S INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law. You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INST.1.01

COURT'S INSTRUCTION NO. 2

In this case one of the Defendants is a municipal corporation. All parties are equal before the law. A municipal corporation is entitled to the same fair consideration that you would give any individual person.

INST. 1.03

COURT'S INSTRUCTION NO. 3

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony. I have taken judicial notice of certain facts. You must accept those facts as proved.

INST.1.04

COURT'S INSTRUCTION NO. 4

During the trial, certain testimony was presented to you by the reading of a deposition. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.

INST.1.05

COURT'S INSTRUCTION NO. 5

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

COURT'S INSTRUCTION NO. 6

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

INST.1.08

COURT'S INSTRUCTION NO. 7

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

INST.1.09

COURT'S INSTRUCTION NO. 8

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

INST.1.11

COURT'S INSTRUCTION NO.

9

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INST. 1.12

COURT'S INSTRUCTION NO. 10

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the witness's age;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

COURT'S INSTRUCTION NO. 11

You may consider statements given by party or by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that one of these witnesses made a statement before the trial not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true, and what weight to give to his testimony here in court.

In considering prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

COURT'S INSTRUCTION NO. 12

It is proper for a lawyer to meet with any witness in preparation for trial.

INST.1.16

COURT'S INSTRUCTION NO. 13

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INST.1.17

COURT'S INSTRUCTION NO. 14

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INST.1.18

COURT'S INSTRUCTION NO. 15

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witnesses' qualifications, and all of the other evidence in the case.

INST.1.21

COURT'S INSTRUCTION NO. 16

You must give separate consideration to each claim and each party in this case. Although there are two defendants, it does not follow that if one is liable, the other is also liable.

In considering a claim against a particular defendant, you must not consider evidence admitted only against the other defendant or only as to another claim.

INST.1.25

COURT'S INSTRUCTION NO. 17

If you decide for the Defendants on the question of liability, then you should not consider the question of damages.

INST.1.31

COURT'S INSTRUCTION NO. 18

I understand that reports about this trial or about this incident may be appearing in the newspapers, and/or on radio, television, and the internet. The reporters may not have heard all the testimony as you have, may be getting information from people whom you will not see here under oath and subject to cross examination, may emphasize an unimportant point, or may simply be wrong.

You must not read anything or listen to anything or watch anything with regard to this trial. It would be a violation of your oath as jurors to decide this case on anything other than the evidence presented at trial and your common sense. You must decide the case solely and exclusively on the evidence that will be received here in court.

COURT'S INSTRUCTION NO. 19

The burden is on the Plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the Plaintiff's claim by a preponderance of the evidence in the case, the jury should find for the Defendants as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

COURT'S INSTRUCTION NO. 20

On October 29, 1996, a man named Michael Kershner was shot during a robbery. In the months that followed, Detectives from the Elkhart Police Department conducted an investigation of the shooting. As a result of that investigation, a man named Chris Parish was charged with the crime, and was convicted.

After he had served eight years in prison, Mr. Parish's conviction was reversed by the Indiana Court of Appeals, and the criminal charges were subsequently dropped.

The Plaintiff in this action has now brought this civil lawsuit against former Elkhart Police Officer Steve Rezutko, as well as the City of Elkhart itself.

The Plaintiff alleges that Detective Rezutko violated his rights in the manner in which the investigation was conducted, and that the City of Elkhart is responsible for those injuries due to its policies and practices.

The Plaintiff is seeking monetary damages arising out of his conviction and imprisonment, which Plaintiff claims was wrongful.

The Defendants deny all of the Plaintiff's allegations, and deny that they are liable to Plaintiff for any damages.

INST.SOC

COURT'S INSTRUCTION NO. 21

Plaintiff Christopher Parish brings a claim under Title 42 U.S.C. section 1983. In order for Parish to succeed on his claim under this federal statute, he must show that the Defendants, the City of Elkhart and Steve Rezutko, acting under the color of state law, deprived him of his due process right to a fair trial.

When I say that a person acts "under color of law," I mean that a person uses or misuses authority that he has because of his official position.

In this case, the parties have stipulated and agreed that the defendants acted "under color" of state law and you must accept that fact as proven.

COURT'S INSTRUCTION NO. 22

A "fair trial" is described as one resulting in a verdict
worthy of confidence.

SPINST.2

COURT'S INSTRUCTION NO. 23

To succeed on his claim for the asserted violation of his constitutional right to due process of law against Defendant Steve Rezutko, Plaintiff Christopher Parish must prove by a preponderance of the evidence that Defendant Steve Rezutko caused a situation in which no fair trial of Plaintiff Parish could take place by doing any of the following things:

1. Using an unnecessarily suggestive identification procedure that resulted in an unreliable identification of Parish that was material and exculpatory; or
2. Knowingly withholding material, exculpatory evidence from the prosecutors, judge, or defense counsel that would have undermined the credibility of the State's witnesses against Parish, or would have otherwise tended to show that Parish was innocent of the charges against him; or
3. Deliberately creating false evidence or statements tending to falsely implicate Plaintiff in a crime by means of improper coercion, manipulation, and/or outright fabrication, all without the knowledge of the prosecutors, judge, or defense counsel.

SPINST.1.1

If you find that Plaintiff has proved any one of these things by a preponderance of the evidence, then you should find for Plaintiff against Defendant Rezutko, and go on to consider the questions of the liability of the City of Elkhart, and of damages.

If, on the other hand, you find that Plaintiff has failed to prove any of these things by a preponderance of the evidence, then you should find for the Defendants, and you will not consider the question of damages.

SPINST.1.2

COURT'S INSTRUCTION NO. 23A

When the word "knowingly" or the phrase "the Defendant knew" is used in these instructions, it means that the Defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the Defendant's conduct, and by all the facts and circumstances surrounding the case.

INST.4.06(B)

COURT'S INSTRUCTION NO. 24

An identification procedure is unnecessarily suggestive when one particular suspect stands out from the others or the procedure utilized by the police officer implicitly suggests or explicitly sends signals or clues that lead the witness to select a predetermined suspect.

If you find that Defendant Rezutko used an unnecessarily suggestive identification procedure, you will have to determine whether the resulting identification was reliable nonetheless. If, under the totality of the circumstances surrounding the identification, there is a substantial likelihood of misidentification, then the identification is not reliable.

In making that determination you should consider the opportunity of the witness to view the suspect at the time of the crime, the witness' degree of attention, the detail and accuracy of his or her prior description of the criminal, the level of certainty demonstrated at the confrontation and the time between the crime and the confrontation.

Against these factors is to be weighed the corrupting effect of the suggestive identification procedure itself.

SPINST.4

COURT'S INSTRUCTION NO. 25

To prove a violation of his constitutional right to due process, it is not enough for Plaintiff to demonstrate that the investigative methods and techniques used by the defendants were flawed. Instead, Plaintiff must show how, specifically, an allegedly flawed procedure or investigation prevented him from having a fair trial.

COURT'S INSTRUCTION NO. 26

Evidence is exculpatory if it tends to undermine the evidence of a criminal defendant's guilt. Even evidence that is only useful for impeachment of a witness can be favorable to the defense and, therefore, exculpatory.

Exculpatory evidence is material if, when taken collectively and not item by item, it could reasonably be taken to put the entire criminal case in such a different light as to undermine one's confidence in the verdict.

COURT'S INSTRUCTION NO. 27

The Defendants had no obligation to disclose any exculpatory or impeachment evidence unless it was known to them at the time of the Plaintiff's criminal trial. In other words, there was no affirmative duty on the part of the Defendants to seek information not in their possession if they were unaware of the existence of that information.

Police have an affirmative constitutional duty to disclose evidence in police possession that is favorable to a person accused of a crime, and that is material to either guilt or punishment, including evidence that may affect the credibility of a witness.

COURT'S INSTRUCTION NO. 27A

Officers must pursue all reasonable avenues of investigation. If the complaint of a crime victim or witness would lead a reasonable officer to be suspicious, a police officer has a duty to investigate further.

28

COURT'S INSTRUCTION NO.

If the Plaintiff would have had access to exculpatory or impeachment evidence before trial by the exercise of reasonable diligence, it cannot be regarded as having been "suppressed."

29

COURT'S INSTRUCTION NO. _____

Police need not spontaneously reveal to prosecutors every piece of information that with the benefit of hindsight and the context of other evidence could help the criminal defendant.

SPINST.11

COURT'S INSTRUCTION NO. 30

Christopher Parish must prove by a preponderance of the evidence that Steve Rezutko was personally involved in the conduct Parish complains about.

You may not hold Steve Rezutko liable for what other employees did or did not do.

INST.7.02

COURT'S INSTRUCTION NO. 31

If you find that Christopher Parish has proven by the preponderance of the evidence that Officer Rezutko violated his right to a fair trial, you must consider whether the City of Elkhart is also liable to him.

The City of Elkhart is not responsible simply because it employed Officer Rezutko. The City of Elkhart is liable for a constitutional violation if Christopher Parish proves by a preponderance of the evidence Officer Rezutko's conduct was a result of its official policy or custom.

INST.7.19

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of the Defendant's conduct;
- the impact of Defendant's conduct on Plaintiff;
- the relationship between Plaintiff and the Defendant;
- the likelihood that the Defendant would repeat the conduct if an award of punitive damages is not made;
- the Defendant's financial condition; and
- the relationship of any award of punitive damages to the amount of actual harm the Plaintiff suffered.

INST.7.24.2

COURT'S INSTRUCTION NO. 32

If you find that Plaintiff has proved his due process claim against Defendant Rezutko by a preponderance of the evidence, you must consider whether the City of Elkhart is also liable to the Plaintiff. The City of Elkhart is not responsible simply because it employed Defendant Rezutko. The City of Elkhart is liable if Plaintiff proves by a preponderance of the evidence that Defendant Rezutko's conduct was a result of an official policy or practice of the City of Elkhart.

To prove his claim against the City of Elkhart, the Plaintiff must prove one of the following:

1. That the City of Elkhart had an express policy of permitting the types of due process violations alleged by the Plaintiff. This includes a decision or policy statement made by the Chief of Police, who was a policy-making official of the City of Elkhart, or the Chief of Police's approval of a decision or policy made by someone else, even if that person is not a policy-making official; or
2. That the City of Elkhart had a custom of condoning the types of due process violations alleged by the Plaintiff that was persistent and widespread, so that it was the City of Elkhart's standard operating procedure. A

persistent and widespread pattern may be a custom even if the City of Elkhart has not formally approved it, so long as Plaintiff proves that a policy-making official knew of the pattern and allowed it to continue. This includes a situation where a policy-making official must have known about a subordinate's actions or failures to act by virtue of the policy-making official's position; or

3. That the City of Elkhart failed to adequately train, supervise or discipline its police officers, in the manner described to you in the following instruction.

If you find that Plaintiff has proved any one of these things by a preponderance of the evidence, then you should find for Plaintiff against Defendant City of Elkhart, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff has failed to prove any of these things by a preponderance of the evidence, then you should find for Defendant City of Elkhart, and you will not consider the question of damages against Defendant City of Elkhart.

COURT'S INSTRUCTION NO. 33

The fact that a municipal policy, custom or practice might lead to police misconduct does not allow a plaintiff, such as Christopher Parish, to recover for damages for alleged constitutional violations unless he also shows that the particular policy, custom, or practice was the "moving force" behind the constitutional violation alleged. This means that Christopher Parish must show an affirmative link between the alleged failure of the City of Elkhart and the violation of his right to a fair trial.

COURT'S INSTRUCTION NO. 34

Proof of an isolated incident of misconduct by an individual officer lacking policymaking authority is insufficient to infer a policy, custom, or practice on the part of the local municipality.

COURT'S INSTRUCTION NO. 35

To succeed on his claim against City of Elkhart for failure to train or supervise, Christopher Parish must prove each of the following things by a preponderance of evidence:

1. The City of Elkhart's training program was not adequate to train its officers to properly handle recurring situations;
2. Policy-making officials, including former Police Chief Dennis Bechtel, knew that more training and/or supervision was needed to avoid the likely deprivations of the due process right to a fair trial alleged by Plaintiff, or that this was obvious to policy-making officials; and
3. The City of Elkhart's failure to provide adequate training and/or supervision proximately caused the deprivation of Christopher Parish's due process right to a fair trial.

COURT'S INSTRUCTION NO. 36

If you find in favor of Christopher Parish, then you must determine the amount of money that will fairly compensate him for any injury that you find he sustained as a direct result of Officer Rezutko and the City of Elkhart's deprivation of his due process right to a fair trial. These are called "compensatory damages."

Christopher Parish must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

The mental/emotional pain and suffering that Parish has experienced. No evidence of the dollar value of mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Parish for the injury he has sustained.

COURT'S INSTRUCTION NO. 37

If you find for the Plaintiff, you may, but are not required to, assess punitive damages against Defendant Rezutko. You may not assess punitive damages against Defendant City of Elkhart.

The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to the Defendant and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against a Defendant.

You may assess punitive damages against a Defendant only if you find that Defendant is liable and that the Defendant's conduct was malicious or in reckless disregard of the Plaintiff's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring the Plaintiff. Conduct is in reckless disregard of the Plaintiff's rights if, under the circumstances, it reflects complete indifference to the Plaintiff's safety or rights.

INST.7.24.1

COURT'S INSTRUCTION NO. 38

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, and sign the appropriate form.

COURT'S INSTRUCTION NO. 39

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond in writing or by having you return to the courtroom so I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

INST.1.33

COURT'S INSTRUCTION NO. 40

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.